OCT 1 1958
JAMES R. BROWNING, CL

No. 412

In the

Supreme Court of the United States

OCTOBER TERM 1957

R. L. RUSSELL,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

IVAN IRWIN,
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Dallas, Texas.

PETE WHITE,
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STATE OF TEXAS,

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

R. L. Russell, Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Court of Criminal Appeals of the State of Texas entered on the 2nd day of September 1958, wherein said Court refused to file or consider Petitioner's application for a writ of Habeas Corpus. In the alternative, if it be determined that petition for certiorari be not the proper remedy, then Petitioner prays that this be considered as an application for an original writ of Habeas Corpus.

OPINIONS BELOW

Opinion of the 160th Judicial District Court of Dallas County, Texas (a Court of General jurisdiction) is printed in the appendix hereto, page 17. From this order no appeal lies under Texas Procedure. *Ex parte Hubbard, 225 S. W. 2d 196. (Art. 119, Code of Criminal Procedure of the State of Texas.)* The District Court had no power under 119 CCP to grant Petitioner any relief, its powers being solely to certify the facts determined on a hearing of the writ to the Court of Criminal Appeals of Texas for its action, in the event the writ issued.

Opinion of the Court of Criminal Appeals of the State of Texas refusing permission to file the application is printed in the appendix, page 24. No transcript is available to Petitioner since the Court of Criminal Appeals refused to permit the filing of the application.

JURISDICTION

Petitioner's application for an original writ of Habeas Corpus to the Court of Criminal Appeals of the State of Texas is printed in the appendix beginning on page 18.

Permission to file the application was refused by the Court of Criminal Appeals, all judges participating.

Jurisdiction of this Court is invoked under *Title 28, U. S. C. A., Section 1257 (3).*

The Court of Criminal Appeals of Texas is not an intermediate court. It is the court of last resort in Texas in all matters within its jurisdiction. Its judgments and orders are not reviewed by the Texas Supreme Court, or by any other Texas Court.

Petitioner is being held in the Texas Department of Corrections, Huntsville, Texas, by virtue of five sentences and commitments issued out of a District Court of Dallas County, Texas. Petitioner urged in his application for a writ of Habeas Corpus that the Grand Jury that returned the indictments, upon which the sentences were based, was unauthorized and illegal; that there was no constitutional or statutory authority in Texas authorizing such grand jury to be impaneled or to function; that a grand jury for the same term of Court and in the same County had previously been impaneled and was functioning when the indictments in this cause were returned; that a second or subsequent grand jury in the same County and at the same term of Court is in violation of Article 3, Section 56 of the Constitution of the State of Texas prohibiting local and special laws, the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Texas Constitution, and by reason thereof he is being denied due process of law and the equal protection of the laws guaranteed to him by the Fifth and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

Whether the Court of Criminal Appeals of the State of Texas erred in refusing permission to file an application for a writ of Habeas Corpus, and in so doing violated the Fifth and Fourteenth Amendments to the Constitution of the United States, or either of them.

Whether imprisonment under an indictment by a second and subsequent grand jury violates the Constitution and laws of the State of Texas, when a regular grand jury had previously been impaneled in the same County and at the same term of Court, and therefore violates the Fifth and Fourteenth Amendments to the Constitution of the United States, or either of them.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent constitutional and statutory provisions are printed in the appendix hereto beginning on page 25.

STATEMENT OF THE CASE

On May 23, 1957, Petitioner was charged by indictment in five cases of embezzlement to which charges he pled guilty and received concurrent sentences of three years in the penitentiary where he is presently confined.

The Grand Jury of Dallas County, Texas, presenting such indictments, was impaneled at 2 p.m. on April 1, 1957, for the April Term of Court. A regular Grand Jury

of Dallas County, Texas, for the same term had previously been impaneled at 9 a.m. on April 1, 1957, and functioned throughout such Term.

Petitioner urged in his application for a writ of Habeas Corpus to the District Court of Dallas County, Texas that the second, additional and subsequent grand jury was an illegal body unauthorized by law and its acts were void. The application for the writ was denied.

Petitioner urged the same fundamental objections in his application for a writ of Habeas Corpus to the Court of Criminal Appeals of Texas, and permission to file the application was denied.

In such application the Petitioner raised the issue of the denial of due process of law, and equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

REASONS FOR GRANTING THIS WRIT

Addressing ourselves now to the question of whether the Court of Criminal Appeals erred in refusing to permit filing of Petitioner's application, it is to be noted that Article 1, Section 12, of the Constitution of Texas provides that the writ of Habeas Corpus is a "writ of right" and that it shall "never be suspended."

The Court of Criminal Appeals, in this instance, refused to permit the filing of Petitioner's application, much less to consider it or to hear evidence thereon.

If the Court can thus ignore the application the writ is "suspended" and placed beyond the reach of an applicant just as certainly as if it had been nullified by legislative act. Neither the Constitution of Texas, nor that of the United States of America permits the suspension of the writ in such an arbitrary and discriminatory manner by the Judiciary any more than it authorizes or permits the abolition of the writ by legislative act or executive caprice.

A substantial question of law exists as to the validity of Petitioner's confinement, as hereinafter shown.

The second, additional and subsequent grand jury impaneled in the same County in Texas and for the same term of Court was authorized neither by the Constitution nor by the Statutes of the State of Texas and is therefore void. Any indictment returned by such grand jury was void and any imprisonment under such indictment is illegal and void.

Petitioner has exhausted all remedies under Texas law and must now resort to the Federal Judiciary.

The order of the Court of Criminal Appeals makes it clear that its action was based primarily on *Hamman v. State, 314 S. W. 2d 301.* In that case the question of the validity of an indictment returned by a second and subsequent grand jury was raised. The Court reversed the conviction upon other grounds. In its opinion the grand jury question was disposed of in the following language:

> "The indictment herein was returned May 23, 1957, by a grand jury impaneled in Criminal District Court No. 2 of Dallas County.

"Said grand jury was impaneled in said Court on April 1, 1957, and on the same day a grand jury had been impaneled in Criminal District Court of Dallas County, Texas.

"We are aware of no constitutional or statutory provision which would *prevent* the impaneling of a grand jury in one District Court while another grand jury is serving in a different District Court in the same county. Farrar v. State, 162 Tex. Cr. R. 136, 277 S. W. 2d 114. (Italics supplied.)

"The trial Court did not err in overruling appellant's motion to quash the indictment."

Petitioner urges that in Texas a grand jury is a creature of the law, and must be *authorized* by the Constitution and Statutes of the State. In *Farrar* a statute was involved specifically authorizing a grand jury to be held over for a period of not more than ninety days (into a succeeding term) in order to complete its business and to operate contemporaneously with a grand jury impaneled at the succeeding term.

In *Hamman* the Texas Court relied upon *Farrar* but the issue in Petitioner's case is entirely different. In Petitioner's case there is no "hold-over" grand jury question.

Article 1, Section 10, Bill of Rights, Texas Constitution, provides that no person shall be held to answer for a criminal offense, punishable by imprisonment in the penitentiary, except upon an indictment of a grand jury.

The Constitution of Texas enjoins the Legislature to "prescribe by law the qualifications of grand and petit jurors," *Article 16, Section 19 of the Constitution.*

In obedience to that mandate the Legislature prescribed the qualifications for grand jurors and the procedure for organizing and selecting a grand jury, *Articles 333-372, Code of Criminal Procedure.*

In *Robinson v. State, 274 S. W. 137*, the Court of Criminal Appeals of Texas held:

> "There can be no question but that, under our laws and Constitution, District Courts alone have the power to call into existence grand juries by rules prescribed by Statute. In no other way can felony indictments be originated."

It is not a matter of there being "no constitutional or statutory authority to *prevent*" as said in *Hamman*, but it is a matter of constitutional or statutory authority to *authorize*, as said in *Robinson.* (Italics supplied).

The question of two grand juries operating contemporaneously in the same county is not new or novel.

Wharton's Criminal Procedure, Vol. 4, page 441:

> "Whether a special or additional grand jury may exist or function contemporaneously with a general grand jury depends largely upon the local constitutional and statutory provisions. The view has been taken that an indictment found by a special or additional grand jury sitting in the same county contemporaneously with the regular grand jury will not satisfy the requirement of a constitutional provision declaring that no person shall be held to answer for a capital or other infamous crime unless on presentment or indictment by a grand jury."

A second, additional and subsequent grand jury was not authorized in Rhode Island. Re *Opinion to the Governor,*

Supreme Court of Rhode Island, 4A 2d 487; 121 A. L. R. 806, Annotated 814.

The Constitution of Rhode Island is similar to the Texas Constitution in respect to the requirement that there be a presentment or indictment by a grand jury.

A broad distinction is to be noted in the reported cases where the regular grand jury has been discharged and then a special grand jury has been impaneled. A like distinction exists in cases of hold-over grand juries. None of the cases, however, support the proposition that a special and additional grand jury may function contemporaneously in the same county and at the same term when a regular grand jury is then legally functioning, unless authorized by Statute adopted pursuant to a Constitutional provision.

The Supreme Court of Alabama in *O'Brien v. State, 8 So. 559*, held that two contemporaneous grand juries were unauthorized. *O'Brien* was cited in the West Virginia case of *Eastham v. Holt, 27 S. E. 891.* Judge Dent used this language in concluding that the acts of a subsequent grand jury in the same term were illegal.

> "Section 4 Art. 3 of the Constitution provides that no person shall be held to answer for treason, felony or other crime not cognizable by a justice unless on presentment or indictment of a grand jury."
>
> * * * * *
>
> "By these two provisions, in so far as the subject-matter thereof is concerned, the common-law power of the courts as well as the legislature is restricted or entirely taken away. The grand jury referred to in the first provision is a grand jury summoned and im-

> paneled according to the second. There is and can be no other grand jury recognized by the constitution or statute law."
>
> * * * * *
>
> "Under our constitutions, state and national, a grand jury is recognized to be a necessary protection to the citizen against unfounded accusation or unjust prosecution, whether it emanates from 'the government, or is prompted by partisan passion or private enmity'."

The Court of Criminal Appeals of Texas recognized that a grand jury cannot be discharged and another impaneled during the same term of Court. *Adame v. State, 283 S. W. 2d 223.*

An arbitrary disregard of the statutes in the selection and organization of a grand jury vitiates and renders such grand jury without authority. *Martinez v. State, 114 S. W. 2d 874.*

In North Carolina *(Loveless, 98 S. W. 2d 773)*, in New Jersey *(Messano, 16 N. J. 142)* and in New York *(McKana, 38 N. E. 950)*, two contemporaneous grand juries were authorized by statute. In Pennsylvania *(Shender v. Harr, 2 Atl. 2d 298)* and in Texas *(Farrar, 277 S. W. 2d 114)* the issues involved a "hold-over" grand jury. In Arkansas *(Rowland, 213 S. W. 2d 379)* a statute authorized the calling of another grand jury after the regular had been discharged. No constitutional question was involved in the Illinois cases as the Constitution provided that a grand jury could be abolished by law in all cases.

Section 10 of Article 1 of the Bill of Rights, Texas Constitution guarantees to an accused that he shall be held to answer only upon an indictment by a legally constituted grand jury. *Section 19* of the same Article guarantees due process of law.

Article 2 of the Constitution of Texas divides the powers of the State of Texas into distinct departments, Legislative, Executive and Judicial.

Article 3, Section 56 provides that the Legislature shall not pass any local or special law, authorizing * * * "summoning or impaneling grand or petit juries."

The Constitutional provisions are important in connection with Petitioner's contention that if more than one grand jury is authorized to function at the same time in Dallas County, Texas, then such authorization is a local or special law and conflicts with *Article 3, Section 56 of the Constitution.*

The Texas Legislature created three (3) Criminal District Courts for Harris County, Texas. *Articles 52-32, 52-158 and 52-158a, Code of Criminal Procedure.*

In *Subsection 6 of 52-158a C. C. P.*, the Legislature provided:

> "The district judges of the criminal district courts of Harris County shall *successively* appoint grand jury commissioners and impanel grand juries." (Italics supplied.)

The Texas Legislature created three (3) Criminal District Courts for Dallas County, Texas. *Articles 52-6, 52-14 and 52-24C, Code of Criminal Procedure.* No provision was

made as to successive impaneling of grand juries but provision was made that either of the judges could receive bills of indictment from the grand jury. *52-23 C. C. P.*

Further, *Article 52-24 C. C. P.*, granting certain powers to prosecuting officials, provided for the examination of witnesses before the *grand jury*. If the plural was meant instead of the singular, the Legislature would have said so by saying *grand juries*. (Italics supplied.)

By Legislative Act, *Article 199 Vernon's Annotated Civil Statutes*, commonly known as the Apportionment Act, effective 90 days after June 7, 1955, the Legislature provided with respect to the three Criminal District Courts of Dallas County, Texas, that:

> "The grand jury shall be empaneled by the Judges of the Criminal District Courts of Dallas County, Texas, as is now provided by law."

Further by *Article 199, Vernon's Annotated Civil Statutes*, the Legislature in the Apportionment Act provided for the operation of the two Criminal District Courts of Bexar County, Texas. It was specifically provided in such Act for Bexar County that:

> "The District Judges of the Criminal District Courts shall alternately appoint grand jury commissioners and impanel grand juries * * *."

It will thus be seen that in two of the larger counties of Texas, namely Harris and Bexar, the Legislature has provided for either alternate or successive impaneling of the

grand jury by the Courts in such counties. Only Dallas County seems to stand alone if more than one grand jury is authorized.

Petitioner submits that the valid existence of the dual grand jury must come from a legislative enactment. But if such be not the case and the law authorizes the same in Dallas County, then such law is a *local* or *special* law expressly prohibited by the Constitution of the State of Texas.

Deriving its power from the Constitution of the State of Texas, the Legislature of Texas has specifically provided in Harris County, Texas, for the successive impaneling of the grand jury, and in Bexar County, Texas the alternate impaneling of the grand jury. If the applicable statute be interpreted to mean that no such limitation exists as to Dallas County, Texas, then that statute is a local or special law applicable only to Dallas County in direct contravention of *Article 3, Section 56 of the Texas Constitution*, and therefore void.

The question does not exist in the Federal Courts as the Congress originally by statute authorized additional grand juries. Now it is controlled by *Rule 6(a) of the Federal Rules of Criminal Procedure* providing that the Court shall order one or more grand juries, as public interest requires.

A democracy cannot endure unless the rights of the citizens are protected by the Courts. They must stand as a bulwark between the citizen and governmental encroachment, otherwise all fundamental rights will be destroyed, and the democracy will cease to exist.

In view of the foregoing, it is Petitioner's contention that he has been denied due process of law, and the equal protection of the laws guaranteed to him by the Constitution of the United States.

CONCLUSION

For the foregoing reasons, this Petition for a writ of certiorari to the Court of Criminal Appeals of the State of Texas should be granted, and in the alternative if he has mistaken his remedy herein, then this Petitioner should be granted his writ of Habeas Corpus.

The facts set forth in the above application are duly verified by Ivan Irwin, one of Petitioner's attorneys, who has been duly admitted to practice before the United States Supreme Court.

Respectfully submitted,

IVAN IRWIN,
605 Fidelity Union Life Bldg.,
Dallas, Texas.

PETE WHITE,
605 Fidelity Union Life Bldg.
Dallas, Texas.

FOWLER ROBERTS,
704 Great National Life Bldg.
Dallas, Texas.

STATE OF TEXAS }
COUNTY OF DALLAS }

BEFORE ME, the undersigned authority, personally appeared Ivan Irwin, who after being duly sworn, upon oath states that the facts contained in the foregoing petition for writ of certiorari are true and correct.

Ivan Irwin
IVAN IRWIN

SUBSCRIBED AND SWORN to by Ivan Irwin on this the 16 day of September 1958.

Nina L. Mitchell
Notary Public in and for
Dallas County, Texas.

CERTIFICATE

I hereby certify that a copy of the foreging petition for a writ of certiorari was deposited in the United States mail, properly addressed and stamped, to the Attorney General of the State of Texas.

H. W. White

APPENDIX

ORDER OF DISTRICT COURT

No. 37619-H

EX PARTE
R. L. RUSSELL } *In the 160th District Court of Dallas County, Texas*

Entered as of the 8th day of August, 1958.

This day came on to be heard the application of R. L. Russell, Relator, by Writ of Habeas Corpus, alleging in substance that he is illegally confined and restrained of his liberty at the Texas State Penitentiary at Huntsville, Walker County, Texas, and that said confinement and restraint is by virtue of a certain judgment and sentence in causes styled State of Texas v. R. L. Russell, bearing numbers C-2743-I, C-2744-I, C-2745-I, C-2746-I and C-2747-I, in Criminal District Court No. 2 of Dallas County, Texas, and that said illegal restraint and confinement is void by reason of the indictments returned in the above causes by a Grand Jury impaneled by Criminal District Court No. 2 of Dallas County, Texas, at the April Term, 1957.

The Court, after having heard the application of Relator and the Motion to Dismiss the application filed by the State of Texas, Respondent, the evidence and argument of counsel, is of the opinion that the application should be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the application of Relator, R. L. Russell for his release from the Texas State Penitentiary

at Huntsville in Walker County, Texas, be, and is hereby, in all things denied, to all of which the Relator by his counsel excepted.

/s/ CLAUDE WILLIAMS

Judge, 160th Judicial District,
Dallas County, Texas.

PETITION TO COURT OF CRIMINAL APPEALS
IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
AUSTIN, TEXAS

APPLICATION FOR ORIGINAL WRIT OF HABEAS CORPUS

Applicant R. L. Russell files this his application for an original Writ of Habeas Corpus with the Court of Criminal Appeals of the State of Texas, Austin, Texas.

That Applicant, R. L. Russell, is illegally confined and restrained of his liberty at the Texas Department of Corrections, Huntsville, Texas, by H. E. Moore, Warden of said institution, and that said confinement and restrainment is by virtue of and under the color of certain judgments and sentences in five (5) causes styled State of Texas v. R. L. Russell, and bearing numbers C-2743-I, C-2744-I, C-2745-I, C-2746-I and C-2747-I, out of the Criminal District Court No. 2 of Dallas County, Texas, copies of the judgments and sentences in said causes being attached and made a part hereof.

That your Applicant is being held only by virtue of the above causes as shown by the certiifcate from the Texas Department of Corrections signed by J. C. Roberts, Chief of the Bureau of Records and Identification, which is hereto attached and made a part of this application.

That the confinement and restrainment is illegal and void by reason of the following:

(a) That at the commencement of the April 1957 Term of Criminal District Court No. 2, Dallas County, Texas, at 2 o'clock in the afternoon a purported Grand Jury was impaneled and thereafter began its deliberations. That said Grand Jury thereafter on the 23d day of May 1957, and during said April Term, 1957, of said Criminal District Court No. 2, Dallas County, Texas, returned the indictments upon which the judgments and sentences were based, said judgments and sentences being hereto attached.

(b) That prior to the impaneling of said Grand Jury aforesaid at the April Term, 1957 in the Criminal District Court of Dallas County, Texas, a regular Grand Jury was impaneled at 9 o'clock in the morning, which was duly charged to inquire into offenses in Dallas County, Texas.

(c) That at the time of the impaneling of the Grand Jury which indicted the Applicant herein, a Grand Jury had already been impaneled for Dallas County, Texas by Criminal District Court of Dallas County, Texas, and said Grand Jury was then and there functioning in its duties of inquiring into offenses.

(d) That the purported Grand Jury which indicted this Applicant, allegedly sworn and impaneled by Criminal District Court No. 2, Dallas County, Texas, was nothing more than a "de facto" Grand Jury and it was illegally constituted and its action in returning the indictments above mentioned was without legal authority and therefore void, thereby rendering such indictments and the subsequent convictions thereon wholly void and of no effect.

(e) That there is no constitutional or statutory authority in the State of Texas authorizing two Grand Juries to be in operation at the same term of Court in the same county at the same time, with the sole exception of a Grand Jury authorized to be held over under the authority of Article 338a of the Code of Criminal Procedure of the State of Texas.

(f) If the legislative acts creating Criminal District Court No. 2 of Dallas County, Texas, and Criminal District Court No. 3 of Dallas County, Texas, and the legislative acts creating the Criminal Judicial District of Dallas County, Texas, authorize more than one Grand Jury at the same time and the same term, such acts constitute a special or local law in contravention of the Constitution of the State of Texas, which prohibits any local or special law governing the impaneling of a Grand Jury. In support thereof Appplicant shows the Court that the legislative acts creating Criminal District Court No. 2 of Harris County, Texas, and Criminal District Court No. 3 of Harris County, Texas, and the legislative acts creating the Criminal Judi-

cial District of Harris County, Texas, provide that said Harris County Criminal Courts shall successively impanel a Grand Jury at the respective terms of said Courts.

(g) That there is no authority, legislative or constitutional, which legally authorized two Grand Juries to be impaneled at the same term in Dallas County, Texas, and to function at the same term in Dallas County, Texas.

(h) A regularly constituted Grand Jury having been impaneled for the April Term, 1957, by Criminal District Court, Dallas County, Texas and while said Grand Jury was functioning as such, a second and subsequent Grand Jury impaneled at the same term and in the same county was void and the indictments returned by such second and subsequent Grand Jury were and are wholly void. That any conviction based upon such void indictment was and is wholly void.

(i) That the Fifth Amendment to the United States Constitution provides that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger * * *" That the circumstances surrounding the indictment of Applicant did not arise in the land or naval forces, or in the militia, in time of war or public danger.

(j) Applicant shows the Court that heretofore and on the 7th day of August, A. D. 1948, he presented to District Court of Dallas County, Texas, an application for a Writ

of Habeas Corpus raising the matters contained herein and that upon such presentment the Hon. Claude Williams, Judge of the 160th District Court of Dallas County, Texas, set a hearing on such application and thereafter and on such hearing said District Court did enter an order denying such Writ, a copy of said order being hereto attached and made a part hereof.

That Applicant herein raises and intends to raise each and every provision of the United States Constitution and each and every provision of the Texas Constitution, specifically but not limited to the "due process clauses," and the provisions with respect to impaneling a Grand Jury and the provisions with respect to the requirement of a valid presentment or indictment of a Grand Jury.

That this Applicant is illegally restrained and confined in violation of his Constitutional privileges and he respectfully prays that an original Writ of Habeas Corpus issue as provided by law and that upon a hearing thereof he be discharged.

That the official court reporter of said District Court has prepared and certified to the Statement of Facts adduced upon such hearing, a copy of which Statement of Facts is being furnished to the Court, along with this application, for the purpose of showing the nature of the evidence that can be produced before this Court on a hearing of this application.

/s/ R. L. RUSSELL

R. L. Russell

STATE OF TEXAS }
COUNTY OF WALKER }

SWORN TO AND SUBSCRIBED by R. L. Russell on this the 27th day of August, 1958.

/s/ IDA GAINES

Notary Public in and for
Walker County, Texas

Ivan Irwin,
Pete White,
Fidelity Union Life Building,
Dallas, Texas.

Fowler Roberts,
Great National Life Building,
Dallas, Texas.

By /s/ IVAN IRWIN

Attorneys for Applicant

ORDER OF COURT OF CRIMINAL APPEALS

EX PARTE

R. L. Russell - - - Original Application

O R D E R

Permission to file application for writ of habeas corpus refused. Hamman v. State, 314 S. W. 2d 301.

/s/ W. A. MORRISON
Presiding Judge

/s/ K. K. WOODLEY
Judge

/s/ LLOYD W. DAVIDSON
Judge

(September 2, 1958)

A TRUE COPY
ATTEST:

/s/ GLENN HAYNES
Glenn Haynes, Clerk, Court
of Criminal Appeals of Texas.

ARTICLE 1, SECTION 10
TEXAS CONSTITUTION

Rights of accused in criminal prosecutions.

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. As amended Nov. 5, 1918.

ARTICLE 1, SECTION 12
TEXAS CONSTITUTION

Habeas corpus

The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

ARTICLE 2
TEXAS CONSTITUTION

Division of powers; three separate departments; exercise of power properly attached to other departments.

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are Legislative to one; those which are Executive to another; and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

ARTICLE 3, SECTION 56
TEXAS CONSTITUTION

Local and special laws.

The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special laws, authorizing:

* * * * *

Summoning or empanelling grand or petit juries;

* * * * *

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities.

ARTICLE 16, SECTION 19
TEXAS CONSTITUTION

Qualifications of jurors.

The Legislature shall prescribe by law the qualifications of grand and petit jurors; provided that neither the right nor the duty to serve on grand and petit juries shall be denied or abridged by reason of sex. Whenever in the Constitution the term "men" is used in reference to grand or petit juries, such term shall include persons of the female as well as the male sex. As amended Nov. 2, 1954.

ARTICLE 119
CODE OF CRIMINAL PROCEDURE

Return to certain county; procedure after conviction.

After indictment found in any felony case, and before conviction, the writ must be made returnable in the county where the offense has been committed, on account of which the applicant stands indicted.

After final conviction in any felony case the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas. The writ may issue upon the order of any district judge, and said judge may upon presentation to him of a petition for said writ, set the same down for a hearing as to whether the writ should issue, and ascertain the facts, which facts shall be transmitted to the Court of Criminal Appeals with the return of the writ if same is issued after such hearing. Provided further, that

should such writ be returned to the Court of Criminal Appeals without the facts accompanying same, or without all of the facts deemed necessary by the Court of Criminal Appeals, said court may designate and direct any district judge or judges of this state to ascertain the facts necessary for proper consideration of the issues involved; and it shall be the duty of the official court reporter of the district judge or judges so designated to forthwith prepare a narration of the facts adduced in evidence upon any such hearing and transmit the same to the clerk of the Court of Criminal Appeals within ten days of the date of such hearing. And it shall be the duty of the district clerk of the county wherein the writ is issued to make up a transcript of all pleadings in such case and to transmit the same within ten days to the clerk of the Court of Criminal Appeals. Provided, that upon good cause shown, the time may be extended by the Court of Criminal Appeals for filing of such narration of facts or transcript.

The clerk of the Court of Criminal Appeals shall forthwith docket the cause and same shall be heard by the court at the earliest practicable time. Upon reviewing the record the court shall enter its judgment remanding the petitioner to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Upon any hearing by a district judge by virtue of this Act, the attorney for petitioner, and the state, shall be given at least one full day's notice before such hearing is held. O. C. 124; Acts 1943, 48th Leg., p. 354, ch. 223, #1.